IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3181 OF 2004

M/s.Philips India Limited — Petitioners
vs.
Ms.Viola D'Silva & ors. — Respondents

Mr.E.P. Bharucha, senior counsel with Ms.Vasanti Kunder for the petitioners.

Mr.Arshad Shaikh with Mr.Mahesh Londe i/b.M/s.Sanjay Udeshi & Co. for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 4th September, 2006

P.C.

Rule. Heard forthwith.

2. The appropriate Government has made a reference to the Industrial Tribunal, by order dated 8th July, 2004 which is the subject matter of the present petition. Pursuant to the failure report submitted by respondent no.15, the petitioners have raised various grounds in the petition. At the stage of hearing however the learned counsel has raised only one point, that the reference is stale and on that count the petition be allowed. The learned counsel further submits that in the event this court is pleased to dismiss the petition, petitioners be permitted to raise the other grounds taken in the petition before the Industrial Tribunal.

. We may now consider whether the reference is liable to be quashed on the ground that it has been made belatedly and/or is stale. The workmen in respect of whom the reference had been made, according to the petitioners, have resigned from their services pursuant to the scheme of Voluntary Retirement more than 10 years ago. They first served a demand on the company by their letter dated 20th July, 2002 demanding the difference in the computed amounts paid to them as lumpsum and the amount equivalent to 1/3rd of the pension amount due to them under VRS-93 without applying any discounting factor along with penal interest at the rate of 18% per annum from 1st February, 1994 till the date of payment. The petitioner-company by their advocates letter dated 7th August, 2002 denied all the allegations and set out that there was no existing relationship of employer and employee between respondents 1 to 13 and the petitioner-company since 1994 and as such they were not entitled to claim any further payments towards VRS-93 and the same is also barred by limitation. In April/May, 2003, the company received a demand notice from respondents 11, 12 and 13 and on 26th August 2003 the company received papers setting out that the justification statement had been filed before respondent no.14. The company wrote to respondent no.14 to which it received no reply. Respondent no.14 thereafter entertained fresh justification statement dated 30th

September, 2003. The petitioner-company by their reply dated 9th October, 2003 interalia contended that the grievance raised by 13 ex-employees does not constitute an Industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 and that there was no existing relationship of employer and employee between the petitioners and respondents 1 to 13 on the date on which the alleged dispute was raised and as such respondents 1 to 3 were not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It was also pointed out that the claim was barred by limitation and as such requested the Assistant Labour Commissioner to satisfy himself and form an opinion on the aforesaid issues before admitting the alleged dispute in conciliation. Respondents 1 to 13 by their letter dated 11th October, 2003 contended, according to the petitioners, falsely that representative of company had agreed to make further payment to them. It is not necessary to refer to the subsequent exchange of correspondence. It the contention of the company that on 30th April, 2004 that it received failure report dated 17th April, 2004. The company contends that while submitting the failure report the respondents had not adverted at all to the contentions of the petitioner-company and in a mechanical and routine manner and without application of mind made a reference to the Industrial Tribunal. Hence the present petition.

3. A reply has been filed on behalf of the respondents 1 to 13. It is their case that the petitioner retired respondents 1 to 13 under a scheme of Voluntary Retirement; VRS-93 through fraud and deceit and they have not yet been paid their full compensation. Respondent no.14, it is set out, has considered various aspects before submitting the failure report. The petitioners also failed to cooperate with respondent no.14 in the course of the conciliation proceedings. It is pointed out that respondents 14 and 15 as well as the petitioners were fully aware that a similar dispute in respect of the same VRS-93, had been raised by 40 other workmen and one of the grounds alleged had been that fraud had been practised on them. That dispute has been referred to the Industrial Tribunal. The Tribunal had recorded a finding of fact that the petitioners had indeed committed a fraud by Award of 31st August, 2000. The Industrial Tribunal had directed the petitioners to pay the difference. The petitioners are seeking to avoid payment to other workmen involved in the same VRS-93 and seeking to raise all kinds of objections and is trying to prevent the reference of a genuine industrial dispute. The Award came to be challenged by the petitioners by Writ Petition No.2154/2000. The petition came to be dismissed by the learned Single Judge by his order dated 13th December, 2000. The petitioner-company aggrieved by the judgment preferred an Appeal being Writ Appeal No.36 of 2001. During the

pendency of the appeal, the petitioner-company and the Union representing the employees came to an understanding in respect of the subject matter which was recorded by way of Agreement dated 1st November, 2001. In view of the consent terms, the appeal came to be withdrawn. In respect of the various contentions urged on behalf of the petitioners that there is no industrial dispute and/or that the respondents are not workmen, it is for the industrial adjudicator to decide and that cannot be gone into by this Court while exercising its extraordinary jurisdiction considering disputed questions of fact and the need for recording findings. It is also pointed out that the law is settled that it is submitted that it is open to the appropriate Government to make a reference as long as there is an industrial dispute and delay by itself is not a ground to reject making of reference. It is pointed out that by suppressing and/or not disclosing the discounting factor, the petitioners played fraud on respondents 1 to 13 and this would be an issue which the industrial adjudicator also can look into. Our attention is also invited to correspondence exchanged by respondent no.7 with the then Vice President (Personnel & HRD) who is now Managing Director of the company informing of short payment of the lumpsum amount which respondent no.7 had accepted in good faith.

4. The issue really is as to whether this Court ought

to strike down the reference on the ground that it is stale. In support of his contention that the reference is stale, the learned counsel has principally relied on the judgement of the Supreme Court in the case of **Nedungadi Bank Ltd. v. K.P.Madhavankutty & ors., 2000 (I) CLR 671.** In that case the employee had been dismissed from service with effect from August 11, 1972. An appeal preferred was dismissed on January 30, 1973. After 7 years, the workman served a notice that discrimination was practised on him as two other employees under similar situation were reinstated in the service of the Bank. The workman took up the matter in conciliation. The Assistant Labour Commissioner of the Central Government by order dated March 11, 1981 held that there was no scope for formal proceeding as the matter was one which arose way back in 1972. The petitioner challenged the same by writ petition before the High Court. In proceedings before the High Court, the learned Single Judge issued a direction to the Central Government to re-examine the matter. This was challenged by the Bank in appeal. The order was upheld. Subsequently the Central Government made a reference. The validity of the reference was upheld. It was that order which was the subject matter of an appeal to the Supreme Court. The Court considering the lapse of 7 years from the order of dismissal, observed that there appears to be no rational basis on which the Central Government could have exercised the powers. The Court

observed that at the time of reference no industrial dispute existed to be the subject matter of a reference under Section 10 of the Act. The Court also observed that when a dispute can be said to be stale would depend on the facts and circumstances of each case and, accordingly, allowed the appeal and set aside the order of the High Court.

. Reliance was also placed on the judgment of the Supreme Court in the case of **State of Karnataka & ors. v. S./M.Kotrayya & ors., 1996 SCC (L & S) 1488.** That was a matter of condonation of delay in preferring proceedings before the Administrative Tribunal. In that case the applicant before the Tribunal had filed a belated application immediately after coming to know that similar claimants and relief had been granted by the Tribunal. The Supreme Court held that that would not be a proper explanation to justify condonation of delay. Reference was also made to the judgement of the Supreme Court in the case of **Chief Engineer, Ranjit Sagar Dam & anr. v. Sham Lal, JT 2006 (6) SC 50.** In that case one of the issues raised was, whether the reference could be made after a long delay. The workman was terminated in 1990 and reference to industrial dispute was made in 1999. The Supreme Court relying on various judgments held that so far as the delay in seeking reference is concerned, no formula of universal application can be laid down and it would depend on

facts of each individual case. The Court quoted from the judgement in **Nadungadi Bank Ltd. (supra).**

5. On the other hand, on behalf of the workmen, the learned counsel submits that the judgement in Nadungadi Bank Ltd. (supra) has been considered and explained by the Supreme Court in **Sapan Kumar Pandit v. U.P.State Electricity Board & ors., 2001 (III) CLR 16.** While considering the issue as to whether delay could extinguish the power of the Government to make the reference, the Court observed as under:

> "9. Hence, the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The Section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute."

. In the case of Sapan Kumar Pandit, the services of the appellant was terminated on 17.7.1975. On raising a dispute the State Government by order dated 29.3.1993 referred the dispute about the legality and propriety of termination to the Labour Court. Dealing with the issue

of staleness, the Court observed as under:

> "15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4K of the U.P.Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

. It will, thus, be clear that there is no hard and fast rule and the issue whether the reference is stale or not depends on facts of each case.

6. In the instant case, no doubt the respondents 1 to 13 had accepted VRS-93 and had ceased to be in the employment of the company since the year 1994. Similarly placed employees through their Union had raised a dispute similar to the one as raised now by respondents 1 to 13 and that had been the subject matter of an industrial reference. An Award was made in favour of the workmen therein. There are findings of fact which no doubt in the appeal preferred against the order of the learned Single Judge were set aside in view of

the Consent Terms between the petitioner and the Union. The workmen who were the subject matter of the reference were paid the difference in terms of the settlement. Even that settlement at the instance of the Union is the subject matter of another pending reference. It is the case of the respondents 1 to 13 that they were also promised that if the reference succeeded, they will be paid the amount like the workmen in the reference. The petitioners, it is submitted, could not discriminate amongst the employees who had opted for VRS-93. Such an act would be arbitrary and unfair. It is immediately after the settlement of the proceedings, in appeal before this Court in the year 2002 that the present respondents 1 to 13 raised a demand which now is the subject matter of the reference. The issue as to whether an industrial dispute subsists requires a finding of fact to be recorded on material produced and proved before the Industrial Tribunal. Whether the workmen were promised that they could be given the same benefit like the workmen in respect of whom a reference was made, will require recording a finding of fact. Considering the judgement in Sapan Kumar Pandit (supra), if there will be an industrial dispute only then the issue of latches will arise. In our opinion, considering the dispute raised and that another section of similarly situated workmen have been paid the difference as now claimed by respondents 1 to 13, the appropriate Government had acted within jurisdiction in

making the reference, considering Section 12 of the Industrial Disputes Act, 1947. We are therefore not inclined to quash the reference on the ground that it is stale. It will be open to the petitioners to raise all preliminary objections which they are entitled to before the Industrial Tribunal as to the maintainability of the reference including on the ground that there is no industrial dispute and/or that on the date of the reference there was no relationship of employer and workman and any other preliminary points. If such contentions are raised by filing written statement and they come within the ambit of preliminary issues, the Tribunal to decide the same as preliminary points.

7. With the above observations, rule is discharged.

There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)